

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ERIE OPERATING, LLC d/b/a
GOLDEN LIVING CENTER-WALNUT
CREEK, ERIE ACQUISITION, LLC;
GOLDEN GATE NATIONAL SENIOR
CARE, LLC; GGNSC EQUITY
HOLDINGS, LLC; GGNSC CLINICAL
SERVICES, LLC;
GGNSC ADMINISTRATIVE SERVICES,
LLC; SPECTRA HEALTHCARE
ALLIANCE, INC.; SPECTRA
HEALTHCARE ALLIANCE VI, LLC; and
BEVERLY ENTERPRISES, INC.,

Plaintiffs,

v.

TOM FOSTER, Administrator of the
Estate of Kenneth W. Foster, Deceased,

Defendant.

C.A. No. 14-72 Erie

MEMORANDUM ORDER

This civil action under the Federal Arbitration Act was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Local Rules 72.1.3 and 72.1.4.

The procedural posture of this case is unusual. Plaintiffs filed their initial Complaint on March 4, 2014. Defendant filed a MOTION TO DISMISS (ECF No. 7), with brief in support. Plaintiffs filed a response in opposition to the motion. Magistrate Judge Baxter heard oral argument and on December 31, 2014, she issued a Report and Recommendation (“R&R”) which recommended that the Motion to Dismiss be GRANTED. Subsequently, Plaintiffs filed both a Motion to File a Supplemental Pleading (ECF No. 15) and timely Objections to the R&R (ECF

No. 17). On February 5, 2015, Magistrate Judge Baxter granted Plaintiffs' motion to file a supplemental pleading. On February 10, 2015, Plaintiffs filed a "Supplemental Complaint" (ECF No. 21), which pleads additional facts regarding the state court action filed by Defendant.

The newly-pled facts change the nature of the Plaintiffs' legal argument rather than merely recount a subsequent occurrence. Thus, the Court finds that Plaintiffs have, in actuality, filed an "Amended Complaint" pursuant to Fed. R. Civ. P. 15(a), rather than a "Supplemental Complaint" pursuant to Fed. R. Civ. P. 15(d). It will construe Plaintiffs' filing as an "Amended Complaint" to which Defendant must file a responsive pleading or appropriate motion.

An Amended Complaint supersedes the original Complaint and becomes the operative pleading in the case. Because the original motion to dismiss and the Magistrate Judge's R&R were based on the original – now superseded – Complaint, that motion, the R&R and the Objections thereto are now moot.

The following order is hereby entered:

AND NOW, this 18th Day of February, 2015, IT IS HEREBY ORDERED, ADJUDGED and DECREED that Defendants' MOTION TO DISMISS (ECF No. 10); the December 31, 2014 Report and Recommendation of the Magistrate Judge; and Plaintiffs' Objections thereto (ECF No. 17) are **DENIED AS MOOT**.

The case is hereby remanded to Magistrate Judge Baxter for further proceedings based on the Amended Complaint.

/s Terrence F. McVerry
TERRENCE F. McVERRY
United States District Judge

cc: U.S. Magistrate Judge Susan Paradise Baxter
All parties of record